

SUPREME COURT OF INDIA

Sri Rajendra Singh Rana

Vs.

Swami Prasad Maurya

SLP(C) No.4664 of 2006

(K.G.Balakrishnan,CJI., H.K.Sema and Dr.Ar.Lakshmanan,JJ., P.K. Balasubramanyan and D.K. Jain JJ.,)

14.02.2007

JUDGMENT

P.K.Balasubramanyan, J.

1. Leave granted.

2. The elections for the constitution of the 14th Legislative Assembly of the State of Uttar Pradesh were held in February 2002. Since, none of the political parties secured the requisite majority, a coalition Government was formed, headed by Ms. Mayawati, leader of the Bahujan Samaj Party (hereinafter referred to as, 'B.S.P.'). B.S.P was admittedly a recognised national party. The ministry was formed in May, 2002. On 25.8.2003, the cabinet is said to have taken a unanimous decision for recommending the dissolution of the Assembly. Based on it, on 26.8.2003, Ms. Mayawati submitted the resignation of her cabinet. Apparently, after the cabinet decision to recommend the dissolution of the Assembly and before Ms. Mayawati cabinet actually resigned, the leader of the Samajwadi Party staked his claim before the Governor for forming a Government. On 27.8.2003, 13 Members of the Legislative Assembly (hereinafter referred to as, 'M.L.As.')

met the Governor and requested him to invite the leader of the Samajwadi Party to form the Government. Originally, 8 M.L.As. had met the Governor and 5 others joined them later in the day, making up the 13.

3. The Governor did not accept the recommendation of Mayawati cabinet for dissolution of the Assembly. On 29.8.2003, the Governor invited the leader of the Samajwadi Party, Mr. Mulayam Singh Yadav to form the Government and gave him a time of two weeks to prove his majority in the Assembly. On 4.9.2003, Mr. Swami Prasad Maurya, leader of the Legislature B.S.P filed a petition before the Speaker in terms of Article 191 read with the Tenth Schedule to the Constitution of India, praying that the 13 B.S.P. M.L.As. who had proclaimed support to Mulayam Singh Yadav before the Governor on 27.8.2003, be disqualified in terms of paragraph 2 of the Tenth Schedule to the Constitution on the basis that they had voluntarily given up their membership of B.S.P., their original political party.

On 05.09.2003, a caveat was also filed on behalf of the B.S.P. before the Speaker of the Legislative Assembly requesting the Speaker to hear the representative of B.S.P. in case any claim of split is made by the members who had left the Party. On 06.09.2003, a request was made by 37 M.L.As., said to be on behalf of 40 M.L.As. elected on B.S.P. tickets, requesting the Speaker to recognise a split in B.S.P. on the basis that one third of the Members of the B.S.P. legislature party consisting of 109 legislators, had in a body separated from the Party pursuant to a meeting held in the M.L.A.'s hostel, Darulshafa, Lucknow on 26.8.2003. The Speaker took up the said application for recognition of a split, the same evening. He verified that the 37 Members who had signed the application presented to him had in fact signed it since they were physically present before him. Overruling the objections of Maurya, the leader of the legislature B.S.P., the Speaker passed an order accepting the split in B.S.P. on the arithmetic that 37 out of 109 comprises one third of the Members of the legislature Party. This group came to be known as the Lok Tantrik Bahujan Dal. But, the said Dal was short lived. For, the Speaker, a little later, on 6.9.2003 itself, accepted that the said Dal had merged with the Samajwadi Party. It is relevant to note that in the order dated 6.9.2003, the Speaker did not decide the application made by B.S.P. seeking disqualification of 13 of its M.L.As. who were part of the 37 that appeared before the Speaker and postponed the decision on that application. It appears that on 8.9.2003, three more M.L.As. appeared before the Speaker stating that they supported the 37 M.L.As. who had appeared before him on 6.9.2003 and were part of that group. The Speaker accepted their claim as well.

4. On 29.9.2003, Writ Petition No. 5085 of 2003 was filed in the High Court of Judicature at Allahabad before the Lucknow Bench challenging the said order of the Speaker. On 1.10.2003, it came up before a Division Bench of the High Court, and it is seen from the Order Sheet maintained by the High Court that the Writ Petition was directed to be listed on 8.10.2003 for further hearing. It was adjourned to 13.10.2003 and then again to 22.10.2003 and to 29.10.2003 and further to 5.11.2003. It is recorded in the Order Sheet that on 5.11.2003, learned counsel for the writ petitioner was heard in detail. No order was passed, but the matter was adjourned to the next day at the request of counsel, who was apparently representing the Advocate General of the State. From 6.11.2003, the matter was adjourned to 10.11.2003 and on the request of the learned Advocate General, it was directed to be listed on 14.11.2003. The same day, the Speaker before whom the petition filed by the writ petitioner Maurya seeking disqualification of 13 of the members of the B.S.P. was pending, after noticing what he had done earlier on 6.9.2003 and 8.9.2003, passed an order adjourning the petition seeking disqualification, on the ground that it would be in the interests of justice to await the decision of the High Court in the pending Writ Petition since the decision therein on some of the issues, would be relevant for his consideration. It was therefore ordered that the petition for disqualification may be placed before him for disposal and necessary action after the High Court had decided the Writ Petition.

5. In the High Court, the Writ Petition had a chequered career. On 14.12.2003, when it came up, it was directed to be listed the next week before the appropriate Bench. On 16.4.2004, it was directed to be put up on 22.4.2004. On 22.4.2004, it was dismissed for default with an observation that neither any counsel on behalf of the writ petitioner nor on behalf of the Speaker was present. It may be noted that on 5.11.2003, the High Court had recorded that it

had heard counsel for the writ petitioner in full and the adjournment for further hearing was at the behest of the Advocate General. Even then, on 22.4.2004, the High Court chose to dismiss the Writ Petition for default on the ground that counsel on both sides were not present. An application for restoration was filed on 27.4.2004 and this application was kept pending for about 8 months until on 20.12.2004, an order was passed recalling the order dated 22.4.2004 dismissing the Writ Petition for default and restoring it to its original number with a further direction to list the Writ Petition before the appropriate Bench on 4.1.2005. On 4.1.2005, the Writ Petition was adjourned at the request of the Advocate General to the next day. On 5.1.2005, it was noticed by the Bench that the matter appeared to have been heard in detail at the admission stage and the Writ Petition had neither been admitted nor any notice ordered to the respondents and counsel for the writ petitioner was again heard on the question of admission and the application for interim relief he had filed and it was recorded that he had concluded his arguments with the further direction to put up the Writ Petition the next day. On 6.1.2005, it was recorded that counsel for the writ petitioner did not press for interim relief at that stage and hence the application for interim relief was being rejected.

6. On 6.1.2005, the Writ Petition was admitted after hearing counsel for the writ petitioner and some counsel who appeared for the respondents. Notices were ordered to be issued to the opposite parties, the group of M.L.As. who had moved the Speaker for recognition of a split. After some further postings, on 18.2.2005, orders were passed regarding service of notice and the Writ Petition was directed to be posted for hearing on 10.3.2005. On 10.3.2005, finding that there was some attempt at evasion of notices, the court ordered substituted service of notices and directed the listing of the Writ Petition on 11.4.2005. On 11.4.2005, service of notice was declared sufficient and the matter was directed to be posted on 2.5.2005 for hearing. After a number of adjournments mainly at the instance of the respondents in the Writ Petition, arguments were commenced. On 12.5.2005, counsel for the writ petitioner concluded his arguments and the case was further adjourned to 25.5.2005 for further hearing after taking certain counter affidavits on record. Ultimately, the argument of one of the counsel for the respondents was started and the matter was adjourned to 6.7.2005 for completion of his arguments and for arguments by other counsel for the respondents in the Writ Petition.

7. Meanwhile, on 7.9.2005, the Speaker passed an order rejecting the petition filed by Maurya for disqualification of 13 M.L.As. of B.S.P. It may be noted that the Speaker had earlier adjourned that application for being taken up after the Writ Petition was decided. Meanwhile, the arguments went on in the High Court and the Writ Petition was directed to be put up on 17.8.2005 for further arguments. The matter was adjourned to the next day and again to subsequent dates.

8. On 8.9.2005, an application was made on behalf of the respondents seeking dismissal of the Writ Petition in view of the order of the Speaker dated 7.9.2005 dismissing the application seeking disqualification of 13 M.L.As. filed by the writ petitioner. The said application was dismissed the same day. On 9.9.2005, arguments were heard and the matter was adjourned for further hearing.

9. On 21.10.2005, an application was made on behalf of the writ petitioner praying for an amendment of the Writ Petition. It was directed to be listed granting time to the respondents in the Writ Petition to file objections. On 22.11.2005, the Order Sheet records an order by one of the judges as follows:

"The matter was listed today only for consideration and disposal of the amendment application together with application for further hearing and by 4.00 PM arguments with respect to amendment application could be concluded. As indicated in the order passed on the application brother M.A. Khan (J) took out a typed and signed 'order' rejecting the application for amendment. Like previous order, brother Hon'ble M.A. Khan again took out a duly typed and signed judgment/ his opinion and directed the bench Secretary to place the same on record as his "judgment" in the main writ petition. The draft of the said judgment was also not circulated to me nor was I ever been consulted by him. It is further pointed out that brother Hon'ble M.A. Khan (J) did not indicate at any time that he had already written out the judgment. Further at no point of time, I had indicated to brother M.A. Khan (J) that the judgment in the writ petition may be prepared by him. It goes without saying that neither the orders passed on the application nor the so called judgment on the merits of the writ petition have been dictated in the open court by brother Hon'ble M.A. Khan(J)."

10. Apparently, in view of these happenings, the learned Chief Justice constituted a Full Bench for hearing the Writ Petition. The amendment prayed for was allowed and the Writ Petition ultimately heard finally and disposed of by the judgment under appeal. As per the judgment under appeal, the Writ Petition was dismissed by the learned Chief Justice while the other two learned Judges quashed the orders of the Speaker and directed the Speaker to reconsider the matter with particular reference to the petition for disqualification of 13 M.L.As. filed by the writ petitioner and pass appropriate orders. Feeling aggrieved, these appeals have been filed.

11. Whatever may be our ultimate decision on the merits of the case, we must express our unhappiness at the tardy manner in which a matter of some consequence and constitutional propriety was dealt with by the High Court. More promptitude was expected of that court and it should have ensured that the unfortunates happenings (from the point of view of just and due administration of justice) were avoided. Though we are normally reluctant to comment on the happenings in the High Court, we are constrained to make the above observations to emphasis the need to ensure that no room is given for criticism of the manner of working of the institution.

12. The respondents in the Writ Petition, the M.L.As. constituting 37 B.S.P. members who left the party, are the appellants in all the appeals except the appeal arising out of Special Leave Petition (Civil) No. 6323 of 2006 filed by the writ petitioner Maurya. Whereas, the respondents in the Writ Petition challenge the decision of the majority of the Bench remitting the matter to the Speaker, the writ petitioner, in his appeal challenges the order of remand

made by the majority on a plea that on the pleadings and the materials available, the High Court ought to have straightaway allowed the petition filed by the writ petitioner for disqualification of the 13 M.L.As. According to him, a remand was unnecessary and considering the circumstances, a final order ought to have been passed by the High Court.

13. Article 191 of the Constitution of India deals with the disqualification for membership of legislative assemblies just like Article 102 deals with disqualification for membership to the Houses of Parliament. Article 102 and Article 191 came to be amended by the Constitution (Fifty-second Amendment) Act, 1985 with effect from 1.3.1985 providing that a person shall be disqualified for being a member of either Houses of Parliament or of Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule to the Constitution of India. The Tenth Schedule was also added containing provisions as to disqualification on ground of defection. The constitutional validity of this amendment was *Zachillhu & Ors.*¹. This Court upheld the validity of the amendment subject to the finding that paragraph 7 of the Tenth Schedule to the Constitution of India required ratification in terms of Article 368(2) of the Constitution of India and it had not come into force, so that there was no need to pronounce on the validity of paragraph 7 to the extent it precluded a judicial review of the decision of the Speaker. But it held that judicial review could not be kept out, though such review might not be of a wide nature. We are proceeding to examine the relevant aspects in the light of that decision.

14. The application by writ petitioner - Maurya to the Speaker, in the present case, was made under paragraph 2 of the Tenth Schedule to the Constitution on the ground that the 13 Members who met the Governor on 27.8.2003 had voluntarily given up their membership of B.S.P., their original political party as defined in the Tenth Schedule. The claim on behalf of the M.L.As. sought to be disqualified and those who claimed to have gone out with them from B.S.P. is that the disqualification at the relevant time is subject to the provisions of paragraphs 3, 4 and 5 of the Tenth Schedule and since there has been a split in B.S.P in terms of paragraph 3 of the Tenth Schedule and a subsequent merger of the 40 M.L.As. with the Samajwadi Party in terms of paragraph 4 of the Tenth Schedule, they could not be held to be disqualified on the ground of defection in terms of paragraph 2(1)(a) of the Tenth Schedule. The Speaker, as noticed, did not pass any order on the application for disqualification of 13 M.L.As. made by Maurya, the leader of the B.S.P. Legislature Party in terms of paragraph 2 of the Tenth Schedule but proceeded to pass an order on the petition filed by 37 M.L.As. before him, claiming that there has been a split in B.S.P. and they constituted one third of the Legislature Party which had 109 members. When he passed the order on the claim of the M.L.As. who had left B.S.P., the then Speaker postponed the decision on the petition for disqualification filed by Maurya, later adjourned it to await the decision in the Writ Petition, but still later, the successor Speaker went back on that order and proceeded to dismiss it after entertaining an alleged preliminary objection even while the Writ Petition was still pending and it was being argued, on the ground that he had already recognized the split.

15. It was thereafter that the writ petitioner sought for an amendment of the Writ Petition which was subsequently allowed.

16. We will now revert to the action that triggered the controversy. Eight of the M.L.As. of B.S.P. followed by five other members of B.S.P. handed over identically worded letters to the Governor on 27.8.2003. A running translation of the letters is as under:

"We under mentioned M.L.As. whose signatures are marked below humbly request you that Shri Mulayam Singh Yadav Ji be invited to form Government because the public of Uttar Pradesh neither want election nor want President Rule."

These members were the members who belonged to B.S.P. and they were requesting the Governor to invite the leader of the opposition to form the Government. It is based on this action, that Maurya, the leader of the Legislature B.S.P., had filed the petition before the Speaker seeking disqualification of these 13 members on the ground that they had voluntarily left B.S.P., recognised by the Election Commission as a national party. It was while this proceeding was pending that on 6.9.2003, an application for recognition of a split was moved by the 37 M.L.As. before the Speaker. Since the leader of B.S.P. had filed a caveat before the Speaker, the Speaker chose to hear the caveator while passing the order. Considering the nature of the controversy involved, it appears to be proper to quote the said representation or application made by the 37 M.L.As. before the Speaker. The running translation of the same reads:

"We, the following Members of the Legislative Assembly, are notified as Members belonging to Bahujan Samaj Party. There is dissatisfaction prevalent among the members of BSP on account of dictatorial approach, wrong policies and misbehaviour towards the Members as practiced by the BSP Leader Km. Mayawati. Being aggrieved on account of the aforesaid reasons, Members, office bearers and workers of the Bahujan Samaj Party held a meeting in Darulsafa on 26.08.2003. All present unanimously stated that Km. Mayawati is occupied with fulfillment of her personal interests alone at the cost of interests of the State of U.P. and society. Hence, it was unanimously resolved that the Bahujan Samaj Party be split up and a new faction in the name of Loktantrik Bahujan Dal be constituted under the Leadership of Shri Rajendra Singh Rana, Member Legislative Assembly. We, the undersigned Members of Legislative Assembly have constituted a separate group which represents the new faction arising out of the split. Our number is more than one third of the total number of Members of the erstwhile Bahujan Samaj Party of the Legislative Assembly. It is, therefore, requested that the aforesaid Loktantrik Bahujan Dal be recognised as a separate group within the Legislative Assembly and a separate arrangement for their seating inside the Assembly be made."

. It was signed by 37 M.L.As.

17. It is on this application that the Speaker passed an order the same evening and it is that order that is the subject matter of challenge in the Writ Petition filed before the High Court. The order of the Speaker records that as per the contents of the application, a meeting of members, office bearers and Members of Legislative Assembly belonging to B.S.P. was held on 26.8.2003 in the Darulshafa and in this meeting, it was unanimously resolved that a new

faction in the name of Loktantrik Bahujan Dal under the leadership of Rajendra Singh Rana be constituted. The Speaker proceeded to reason that the number of members who have constituted the group are seen to be 37 out of 109 and that would constitute one-third of the total number of Legislators belonging to B.S.P. In view of the objections raised by Maurya, who had filed the caveat before him, the Speaker verified whether 37 members had signed the representation or application. Since they were present before him and were identified, he proceeded on the footing that 37 M.L.As. of B.S.P. had appeared before him with the claim. The Speaker noticed the contention of the caveator that the burden of proving any split in the original political party lay on the 37 M.L.As. and that unless they establish a split in the original political party, they could not resort to paragraph 3 of the Tenth Schedule to the Constitution and claim that there has been a split in the political Party and consequently they have not incurred disqualification under paragraph 2 of the Tenth Schedule. Further, overruling the contention of the caveator that the decision relating to the split could be taken only by the Election Commission and overruling the contention that the original 13 members who had left the Party or voluntarily given up their membership of the Party did not constitute one-third of the total number of the Legislators belonging to B.S.P. and hence they are disqualified, the Speaker proceeded to say that the first condition to satisfy the requirement of paragraph 3 of the Tenth Schedule was only that the members must have made a claim that the original legislature Party had split and they should show that as a consequence, the legislature Party has also split and that the split group had one-third of the members of the legislature Party. Therefore, the Speaker taking note of the one-third legislators before him proceeded on the basis that it would be sufficient if a claim is made of a split in the original political Party. The Speaker formulated the position thus:

"Under para 3 following conditions have to be fulfilled:-

1. The making of a claim by any Member of a House that he and some other members of his legislature party have constituted a group representing a faction which has arisen as a consequence of split in his original political party.
2. The newly constituted group has at least one third of the total number of members of such legislature party. If in a case the aforesaid two conditions are fulfilled, the person making such a claim and the other members will not be disqualified from the membership of the Legislative Assembly on the grounds mentioned in para 2 of the 10th Schedule."

The Speaker also overruled the argument that only 13 M.L.As. had originally quit the original political party and they should be disqualified and the others subsequently joining them would not improve the position. The Speaker proceeded to observe that he had to decide the question of disqualification of the 13 M.L.As. raised by Maurya functioning as a Tribunal and he would be taking a decision thereon at the appropriate time. It was thus that the claim of 37 members of a split, was recognised by the Speaker. The Speaker thus did not decide whether there was a split in the original political party, even prima facie.

18. The same day, the Speaker also entertained another application from the 37 M.L.As. and ordered that he was recognising the merger of the Lok Tantrik Bahujan Dal in the Samajwadi Party.

19. The Speaker had relied on an observation in Ravi S. acceptance of the position adopted by the 37 M.L.As. for recognition of a split that it was enough if they made a claim of split in the original political party. In paragraph 36 of that judgment, after setting down the two requirements as :

“(i) The member of a House should make a claim that he and other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original party; and (ii) Such group must consist of not less than one-third of the members of such legislature party.

This Court observed:

"In the present case the first requirement was satisfied because Naik has made such a claim. The only question is whether the second requirement was fulfilled."

But the Speaker failed to notice the following sentence in paragraph 38 of the same judgment wherein it was stated:

"As to whether there was a split or not has to be determined by the Speaker on the basis of the material placed before him."

Thus, there was no finding by the Speaker that there was a split in the original political party, a condition for application of paragraph 3 of the Tenth Schedule.

20. Now we may notice the position adopted by the High Court in the judgment under Appeal while dealing with the Writ Petition filed by Maurya challenging the order of the Speaker. The learned Chief Justice took the view that the Speaker was justified in finding a split on the basis of a claim of split in the original political party and one-third members of the legislature party separating by taking into account all events upto the time of his taking a decision on the question of split. The learned Chief Justice held that the snowballing effect of a split could be taken note of and that the Speaker had not committed any illegality in not considering and deciding the petition filed by Maurya seeking disqualification of 13 M.L.As. in the first instance and in keeping it pending.

21. He thus upheld the decision of the Speaker. But the other two learned judges, though they gave separate reasons, basically took the view that the Speaker was in error in not deciding the application seeking disqualification of the 13 members first and in proceeding to decide the application for recognition of a split made by the 37 legislators before him. Since the proceeding arose out of a petition seeking a disqualification in terms of paragraph 2 of the Tenth Schedule to the Constitution, in terms of paragraph 6 of the Tenth Schedule, a decision on the claim for disqualification could not be kept by, even while recognising a split. They

therefore quashed the order of the Speaker and directed the Speaker to reconsider the question of defection raised by the writ petitioner Maurya, in the light of the stand adopted by some of the M.L.As. before the Speaker that there has been a split in terms of paragraph 3 of the Tenth Schedule and so they have not incurred the disqualification in terms of paragraph 2 of the Tenth Schedule. This majority view and the interference with the order of the Speaker is challenged by the various respondents in the Writ Petition forming the group of 37. The writ petitioner himself has challenged that part of the order which purports to remand the proceeding to the Speaker by taking up the position that on the materials, the High Court ought to have straightaway held that the defence under paragraph 3 of the Tenth Schedule to the Constitution has not been made out by the 37 members of B.S.P. and that the 13 of them in the first instance and the balance 24 in the second instance stood disqualified in terms of paragraph 2(1)(a) of the Tenth Schedule to the Constitution.

21. Elaborate arguments have been raised before us on the interpretation of the Tenth Schedule, the content of the various paragraphs and on the facts of the present case. Based on the arguments it is first necessary to deal with the scope and content of the Tenth Schedule in the light of the object with which it was enacted.

22. The Constitution (Fifty-Second Amendment) Act, 1985 amended Articles 102 and 191 of the Constitution by introducing sub-articles to them and by appending the Tenth Schedule introducing the provisions as to disqualification on the ground of defection. They were introduced to meet the threat-posed to democracy by defection. A ground of disqualification from the membership of the Parliament or of the Assembly on the ground of defection was introduced. The constitutional validity of the amendment and the inclusion of the Tenth Schedule was upheld by this Court in *Kihoto Hollohan* (supra) except as regards paragraph 7 thereof, which was held to require ratification in terms of Article 368(2) of the Constitution. It is not in dispute that paragraph 7 of the Tenth Schedule is not operative in the light of that decision. The constitution Bench held that the right to decide has been conferred on a high dignitary, namely, the Speaker of the Parliament or the Assembly and the conferment of such a power was not anathema to the constitutional scheme. Similarly, the limited protection given to the proceedings before the Speaker in terms of paragraph 6 of the Tenth Schedule to the Constitution was also justified even though the said protection did not preclude a judicial review of the decision of the Speaker. But that judicial review was not a broad one in the light of the finality attached to the decision of the Speaker under paragraph 6(1) of the Tenth Schedule and the judicial review was available on grounds like gross violation of natural justice, perversity, bias and such like defects. It was following this that the *Ravi S. Naik* (supra) decision was rendered by two of the judges who themselves constituted the majority in *Kihoto Hollohan* (supra) and the observations above referred to but which were explained subsequently, were made. Suffice it to say that the decision of the Speaker rendered on 6.9.2003 was not immune from challenge before the High Court under Articles 226 and 227 of the Constitution of India.

23. Learned counsel for the writ petitioner raised an interesting argument. He submitted that the Speaker in terms of paragraph 6 of the Tenth Schedule was called upon to decide the question of disqualification and only to a decision by him on such a question, that the

qualified finality in terms of paragraph 6(1) got attached and not to a decision independently taken, purporting to recognise a split. He pointed out that in this case, the Speaker had not decided the petition for disqualification filed against the 13 M.L.As., and the Speaker had only proceeded to decide the application made by 37 members subsequently for recognizing them as a separate group on the ground that they had split from the original B.S.P. in terms of paragraph 3 of the Tenth Schedule. He submitted that no such separate decision was contemplated in a proceeding under the Tenth Schedule since the claim of split was only in the nature of a defence to a claim for disqualification on the ground of defection and it was only while deciding the question of defection that the Speaker could adjudicate on the question whether a claim of split has been established. When an independent decision is purported to be taken by the Speaker on the question of split alone, the same was a decision outside the Tenth Schedule to the Constitution and consequently, the decision of the Speaker was open to challenge before the High Court just like the decision of any other authority within the accepted parameters of Articles 226 and 227 of the Constitution. In other words, according to him, the qualified finality conferred by paragraph 6(1) of the Tenth Schedule was not available to the order of the Speaker in this case.

24. On behalf of the 37 M.L.As., it is contended that it is not correct to describe paragraphs 3 and 4 of the Tenth Schedule merely as defences to paragraph 2 and the allegation of defection, that paragraphs 3 and 4 confer independent power on the speaker to decide a claim made under those paragraphs. It is submitted that reliance placed on paragraph 6 and the contention that a question of disqualification on the ground of defection must arise, before the Speaker could decide as a defence or answer, the claim of split or the claim of merger was not justified. Whatever be the decisions that were taken by the Speaker in terms of paragraph 3, paragraph 4 or paragraph 2 of the Tenth Schedule, enjoyed the qualified immunity as provided in paragraph 6 of the Tenth Schedule.

25. In the context of the introduction of sub-Article (2) of Article 102 and Article 191 of the Constitution, a proceeding under the Tenth Schedule to the Constitution is one to decide whether a Member has become disqualified to hold his position as a Member of the Parliament or of the Assembly on the ground of defection. The Tenth Schedule cannot be read or construed independent of Articles 102 and 191 of the Constitution and the object of those Articles. A defection is added as a disqualification and the Tenth Schedule contains the provisions as to disqualification on the ground of defection. A proceeding under the Tenth Schedule gets started before the Speaker only on a complaint being made that certain persons belonging to a political party had incurred disqualification on the ground of defection. To meet the claim so raised, the Members of the Parliament or Assembly against whom the proceedings are initiated have the right to show that there has been a split in the original political party and they form one-third of the Members of the legislature of that party, or that the party has merged with another political party and hence paragraph 2 is not attracted. On the scheme of Articles 102 and 191 and the Tenth Schedule, the determination of the question of split or merger cannot be divorced from the motion before the Speaker seeking a disqualification of a member or members concerned. It is therefore not possible to accede to the argument that under the Tenth Schedule to the Constitution, the Speaker has an independent power to decide that there has been a split or merger of a political party as

contemplated by paragraphs 3 and 4 of the Tenth Schedule to the Constitution. The power to recognize a separate group in Parliament or Assembly may rest with the Speaker on the basis of the Rules of Business of the House. But that is different from saying that the power is available to him under the Tenth Schedule to the Constitution independent of a claim being determined by him that a member or a number of members had incurred disqualification by defection. To that extent, the decision of the Speaker in the case on hand cannot be considered to be an order in terms of the Tenth Schedule to the Constitution. The Speaker has failed to decide the question, he was called upon to decide, by postponing a decision thereon. There is therefore some merit in the contention of the learned counsel for the B.S.P. that the order of the Speaker may not enjoy the full immunity in terms of paragraph 6(1) of the Tenth Schedule to the Constitution and that even if it did, the power of judicial review recognized in the court in *Kihoto Hollohan* (supra) is sufficient to warrant interference with the order in question.

26. In a sense, this aspect may not be of a great importance in this case since going by the stand adopted on behalf of the 37 M.L.As., the Speaker was justified in keeping the petition seeking disqualification of 13 M.L.As. pending, even while he proceeded to accept a case of split in the B.S.P.. The question really is whether the Speaker was justified in doing so. As we have indicated above, the whole proceeding under the Tenth Schedule to the Constitution is initiated or gets initiated as a part of disqualification of a member of the House. That disqualification is by way of defection. The rules prescribed by various legislatures including the U.P. legislature contemplate the making of an application to the Speaker when there is a complaint that some member or members have voluntarily given up his